

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

**COMMENTS IN THE MATTER OF:**

Amendment of Part 97 of the Commission's  
Amateur Service Rules to Eliminate  
Morse code testing on a limited basis.

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RM- 10805

To: The Commission

**COMMENTS** in response as **REBUTTAL** to opposition and or comments made concerning my petition (RM-10805) by Leroy Larry Klose of NCI , Leonard Anderson, and James Wiley of NCVEC. I, Charles L. Young Jr., submit the following:

**RM-10805 Addresses all Issues**

The comments made in opposition to RM-10805 by Mr. Klose and Mr. Anderson become redundant upon adoption of RM-10805 and are therefore off point. Specifically, RM-10805 seeks to grant HF access to the existing no code Tech Plus License Class with the passing of Elements 2 and 3 only. Adoption of RM10805 would remove most of the perceived hardships presented to no code applicants as outlined in the anti-telegraphy testing petitions while retaining telegraphy testing for the higher license classes. Once HF access is granted to no-code Tech Plus, any arguments about CW learning hardships, regulatory value, technical arguments ,CW versus voice/other data modes, loss of potential amateurs, and ADA issues are mitigated, become unnecessary, redundant, and off point.

To claim they are harmed by RM-10805, petitioners would have to show that withholding additional spectrum based on the passing of Element 1 to become a General or Extra Class Amateur would be an undue hardship on applicants in light of the broad HF access provided for in RM-10805.

**Other Comments on RM-10805**

Many comments run along the lines of those made by Mr. James Wiley. They argue that code testing must be removed from all license classes, not just one. Mr. Wiley states:

*“..all this being said, there remains no legal or technical reason for applicants to demonstrate the skill as a prerequisite to obtaining a license, at whatever level. Morse code is a skill, nothing more. ”*

Mr. Wiley and NCVEC bear the burden of proof to show why this testing must be removed as requested in the NCVEC petition or suggested in his comments. Instead, they insinuate that those who wish to retain testing have some obligation to prove to them it is needed, or have failed to meet an imagined responsibility to defend telegraphy testing. It is the current law. Supporters of testing may make statements in favor of retaining the current law without the need to prove anything.

More importantly however, these arguments fail to identify how a potential applicant is injured by allowing testing to remain for higher classes, once the Element 1 requirement is removed for Tech Plus as suggested by RM-10805. If the Commission were to agree with all the points

made in Mr. Wiley's comments, removal of code testing from Tech Plus would address these issues without the need to remove testing from the higher classes. Again, to claim harm by RM-10805 petitioners would have to demonstrate how anyone is harmed **by merely holding back spectrum** based on not qualifying for General or Extra Classes with Element 1 in place as called for in RM-10805.

### **Americans with Disabilities**

In his objection to RM-10805, Mr. Klose states:

*"Further, the Commission should consider whether the Morse code exam rule, 47 C.F.R. 97.503(a), even if only retained for the Extra class license, would: (1) raise ADA issues and (2) require the Commission to reinstate the Medical Waiver Certificates. "*

Word of the street is that code testing opponents plan to attempt to persuade large numbers of applicants to request waivers, ultimately causing an undue burden on the Commission and/or the waiver process. In other words, they seek to create/cause a regulatory issue in order to get their way.

The need for reasonable accommodation under the ADA will still exist for the written test elements and was not addressed by those who would use it as a weapon to remove telegraphy testing. Nothing in RM-10805 or in these comments would prohibit such accommodation for the written test or for Element 1 if desired by the Commission.

In other areas of ADA compliance such as parking spaces and restroom stalls, a reasonable accommodation is required to allow general access by the disabled. Once this accommodation is made, nothing in the ADA rules would prohibit a business from providing special facilities (parking or restroom) for other customers that might be inaccessible to the handicapped even as part of some special membership requiring testing or dues.

Such reasonable accommodation as defined by the ADA would be accomplished by RM-10805. When the need for Element 1 is removed as a requirement for HF access for Tech Plus License Class, the disabled would have access to HF per the petitions of NCI et al. Beyond any accommodation deemed reasonable by the Commission for testing, (with RM-10805) a disabled person would have to show how they were harmed only on the basis of the additional spectrum available to General and Extra Class Licensees by virtue of the Element 1 requirement.

In reality, many disabled Amateurs rely on CW as their mode of choice today. The CW test ensures that there are potential amateurs with whom they may communicate in a mainstream environment. The case could be made that removing telegraphy testing completely would violate the rights of these disabled amateurs to have people with whom to communicate in the mainstream today.

### **A Word on Numbers**

If Commission's evaluation of the various petition comments is a numbers game, it can easily be seen that the FISTS petition(RM-10811), which calls for retention of CW testing, has the largest comment and approval rate of all petitions. All pre-WRC polls showed nearly 70% of amateurs used CW. Mr. Klose himself said, when running for the NCI Board of Directors(from the NCI Website),

*"I read and summarized all the Comments and Replies submitted in response to the FCC License Restructuring proceeding which showed that 70% of the respondents favor full General HF privileges with a maximum 5wpm code test. "*

This indicates that Mr. Klose had knowledge that 70% of Amateurs favored code testing, yet he has continued to push forward the contrary goals of NCI, namely the eradication of all telegraphy testing.

### **Conclusions**

Although the comments by both Mr. Klose and Mr. Anderson are long dissertations filled with tenuous logic and off point legal arguments, the rulemaking requested in RM-10805 makes refuting them on a point by point basis unnecessary. By offering HF access to no code applicants, RM-10805 would require these gentlemen to show how the no code applicant would be harmed simply on the basis of being denied the extra spectrum that would be afforded to those who passed Element 1 and became General or Extra Class Amateurs.

Contrary to Mr. Wiley s'comments, RM-10805 has no Burden of Proof where it reaffirms the Commission s'current rules on Element 1 testing for General and Extra license classes. It meets burden of proof in explaining why code testing should be removed from only the Tech Plus license class. If one were to agree with the general logic of the no-code petitions, one must agree that there is no issue with granting Tech Plus no-code HF access since the no-code petitions seek to grant access to ALL license classes and Tech Pus is a current license class. Once this (Tech Plus) access is given, the various no-code petition requirements are met WITHOUT the need to remove telegraphy testing from General and Extra classes. Mr. Klose, Mr. Wiley, and Mr. Anderson seek to dismiss RM-10805 for precisely this reason. As long as RM-10805 exists, the no-code arguments for total removal of telegraphy testing are met and their petitions become redundant. In addition, Mr. Klose seeks this dismissal and action on the pro-code petitions quickly before common sense can prevail, and more importantly, without due process.

The comments of Mr. Klose, Mr. Wiley and Mr. Anderson (et al) should therefore be disregarded as superfluous, off point, and any actions or conclusions called for in them by the Commission **dismissed, and or denied.**

If the Commission feels action on removal of telegraphy testing is needed, **RM-10805 is the solution that best serves the desires of no-coders and pro-coders alike.** It calls for a manageable change in regulations that can be monitored and evaluated closely. RM-10805 should be allowed, with due process, to become rule.

Respectfully,

**SUBMITTED ELECTRONICALLY**

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